

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

PAYMENTS AND COLLECTIONS

I. CONSTITUTIONAL FOUNDATION

- A. U.S. Constitution, Article I, Section 9, Clause 7.

II. STATUTORY FOUNDATION

- A. 10 U.S.C. § 2307, Advance Payments.
- B. 31 U.S.C. § 3727, Assignment of Claims Act.
- C. 31 U.S.C. § 3901, Prompt Payment Act.
- D. 31 U.S.C. § 3302, Miscellaneous Receipts Act.
- E. 31 U.S.C. § 3711, Federal Claims Collection Act.
- F. 31 U.S.C. § 3701, Debt Collection Act.
- G. 41 U.S.C. § 255, Advance Payments.

III. REGULATORY FOUNDATION

- A. FAR Part 32.

IV. TYPES OF CONTRACT PAYMENTS

- A. Advance Payments - 10 U.S.C. 2307, 41 U.S.C. 255.
 - 1. May be used on any type of contract, but should be authorized sparingly, and only if other methods of contract financing are not reasonably available to the contractor.
 - 2. Statutory Limitations on Use
 - a. Contractor must give adequate security.

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- b. Amount may not exceed the unpaid contract price.
 - c. Must be a written determination by the agency head or designee that advance payment is in the public interest, or it facilitates the national defense.
- 3. Standards for Use - FAR 32.4
 - a. Will not exceed interim cash needs.
 - b. Necessary to supplement other funds.
 - c. Responsible contractor.
 - d. Government benefit from performance.
 - e. Compliance with FAR 32.403.
 - (1) R&D with educational institution
 - (2) M&O of Government Plant
 - (3) Acquisition of Government facility
 - (4) Classified contract
 - (5) Financially weak contractor
 - (6) Loans not available or rates unreasonable
- 4. Advance Payments not Subject to FAR Limitations.
 - a. Rent.

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- b. Tuition.
 - c. Insurance Premiums.
 - d. Expenses of investigations in foreign countries.
 - e. Connection charges for public utilities for Government buildings or installations.
 - f. Subscriptions to publications.
 - g. Certain small purchases for services or supplies in foreign countries.
 - h. Enforcement of customs or narcotics laws.
 - i. Other transactions excluded by the agency under statutory authority.
 - (1) Advertising for military recruitment in high school and college publications not to exceed \$500 under any one contract.
- B. Progress Payments - Payment made even though nothing delivered
- 1. Customary rate - 80 percent (85 percent for small business concerns).
 - 2. Unusual terms - Any progress payment with rate higher than customary rate.
 - 3. Suspension or reduction of payments.

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- a. Contractor has inadequate system to track payments.
 - b. Contractor was received overpayments.
 - c. Contractor performance is unsatisfactory.
 - d. Contractor having financial difficulties.
4. Progress Payments are generally not used on contracts less than \$1 Million.
5. Exceptions
- a. Several contracts aggregating more than \$1 Million.
 - b. Small and small disadvantaged business
 - c. Other extraordinary circumstances.
- C. Partial Payments - Payment made as goods or services are delivered.
- D. Progress Payment Construction Contracts - Based on percentage completion
1. Retainage
- a. Use retainage only if contractor is not making satisfactory progress.
 - b. Limited to 10%.
 - c. May reduce percentage as contract nears completion.

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- d. Pay promptly at conclusion of contract.
- E. Loan Guarantees

BONDS AND SURETIES

- A. Performance Bonds and Bid Guarantees
 - 1. Benefit Government by ensuring completion of contract performance.
 - 2. Sureties liable to Government if contractor defaults.
 - a. Surety may complete performance itself or pay Government.
 - b. Sureties that complete performance entitled to unpaid contract proceeds.
 - c. Contractor liable for excess reprocurement costs if defaulted, or liquidated damages if late.
- B. Payment Bonds
 - 1. Benefit laborers, subcontractors, and suppliers if contractor fails to pay them.

VI. ASSIGNMENT OF CLAIMS

- A. Directs payment to someone other than contractor.
- B. Conditions for Use
 - 1. Contract payments aggregate \$1,000 or more.

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2. Assignment made to bank, trust company, or other financing institution.
 3. Contract does not prohibit assignment.
 4. Assignment covers all unpaid amounts, is made to only one party, and is not subject to further assignment.
 5. Copies of assignment are provided to appropriate offices.
- C. Government may be liable for erroneous payments.
- D. Requirements for Valid Assignment
1. Corporation
 - a. Executed by authorized representative.
 - b. Attested by Secretary or Assistant Secretary, not Treasurer.
 - c. Impressed with the corporate seal, or accompanied by a certified copy of the resolution of the Board of Directors authorizing the signing representative to execute the assignment.
 2. Partnership
 - a. Signed by at least two partners.
 3. Individual
 - a. Notarized signature.

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VII. PROMPT PAYMENT

- A. General Rule -
 - 1. The due date for payment of invoices is the 30th day after the designated payment office has received a proper invoice from the contractor, or the 30th day after acceptance of supplies or services, whichever is later.
- B. Exceptions -
 - 1. Seven days for meat.
 - 2. Ten days for other food products.
 - 3. Fourteen days for construction.
- C. For purposes of computing an interest penalty only, acceptance is deemed to have occurred 7 days after the delivery of supplies or services unless there is a disagreement over quantity, quality, or compliance with a contract requirement.
- D. Interest is payable at the Treasury rate which is adjusted every six months.
 - 1. If a late payment is made, interest is to be paid automatically.
 - 2. If contractor must request the interest payment, an additional penalty must be paid.
- E. Discounts for Prompt Payment may be taken.

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1. If the Government improperly takes a discount it is subject to an additional penalty.
- F. Proper Invoice must include:
1. Name and address of contractor;
 2. Date of the invoice;
 3. Contract number;
 4. Description, number of units, unit measure, unit price, and extended price;
 5. Shipping and payments terms;
 6. Where payment should be sent;
 7. Who to notify in the event of a problem;
 8. Other information required by the contract.
- G. Requesting an opinion from the Comptroller General does not stop interest from accruing.
- H. Prompt Payment Act interest stops accruing after one year. Interest may start accruing under Contract Disputes Act if contractor files a claim.

VIII. COLLECTION

- A. Demand Letter - Send on debts over \$1.
1. Include description of debt.
 2. Demand payment within thirty days.

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3. Interest will begin to accrue if payment not made in thirty days.
 4. Identification of individual to contact concerning debt.
 5. Include offer to negotiate.
 - a. If a contract debt, contracting officer must have issued a final decision under FAR 33.2.
 - b. Inconsistency with FAR 33.2. How final is a final decision if the demand letter offers to negotiate?
 - c. Limit offer to negotiate to repayment terms.
 6. Contractor may appeal.
- B. Right to Set-Off against other contracts
1. Requires prior approval from DFAS-IN
 2. Contracts may prohibit set-off.
- C. Contract Withholding against current contract.
1. Funds may be reused if they haven't expired.
- D. Direct Payment
1. Miscellaneous receipts statute
 2. Funds may not be reused unless reappropriated by Congress.

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- E. Interest
- F. Statute of Limitations is six years.
- G. Write-Off per FAR 32.616
 - 1. Debts under \$100,000 may be written off if:
 - a. Further collection not practical;
 - b. Cost of collection would exceed amount of recovery.
- H. Termination of Collection Action
 - 1. Inability to collect any substantial amount.
 - 2. Inability to locate debtor.
 - 3. Cost of collection would exceed amount of recovery.
 - 4. Government's claim is legally without merit.
 - 5. Government's claim cannot be substantiated by evidence.
- I. Compromise or Settlement
 - 1. Agency may compromise or settle debts up to \$100,000.
 - 2. Debts over \$100,000 must be referred to Department of Justice.
 - 3. Debts cannot be compromised or settled if any indication of fraud.

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IX. CONCLUSION

General rule - The due date for payment of invoices is the 30th day after the designated office has received a proper invoice from the contractor, or the 30th day after acceptance of supplies or services, which ever is later.

For purposes of computing an interest penalty only, acceptance is deemed to have occurred 7 days after the delivery of supplies or services unless there is a disagreement over quantity, quality, or compliance with a contract requirement.

Example 1.

Contractor A delivers supplies on March 1. Contractor A is able to issue an invoice on the spot via a hand held computer. Acceptance is deemed to have occurred on March 8. Payment is due 30 days after March 8 because deemed acceptance is later than the receipt of the invoice.

Example 2.

Contractor B delivers supplies on March 1. Contractor B only invoices on a monthly basis, at the end of the month. The invoice is received by the designated office on April 1. Payment is due 30 days after April 1 because it is later than the date of deemed acceptance.